The provision for the representation of large numbers is a beneficial one, based on the equitable policy of doling out partial justice [30] rather than denying it altogether. Each case must be considered on its merits. "Common interest" is a broad term and should not be defined. Inhaling the equitable spirit of the code remedies, the courts should allow the source of the rule in chancery practice to control as a guide, and the requirements of fairness and due process of law to mark out the boundaries. Within these limits, they should respond freely to the call of convenience.

JUDGMENT AS A BAR TO CONTEMPT PROCEEDINGS. — The courts, fearing that the usual criminal process was too slow and cumbrous, at an early date [1] assumed the power to punish summarily in cases where the course of justice was in danger of being obstructed. This power [2] is now deemed inherent in all courts of record.[3] Although limited by express constitutional [4] or legislative provisions or by complications resting upon the very nature of our government, its scope must always be determined by the public necessity for the maintenance and protection of the court's dignity [5] and the unhampered exercise of its functions.[6]

The question arose recently whether a court may punish summarily after a suit has been prosecuted to judgment. The Supreme

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constructively. Watson *v.* McClane, 18 Tex. Civ. App. 212, 45 S. W. 176 (1898). *Cf.* Buck *v.* Simpson, 166 Pac. 146 (Okla. 1917). See authorities in L. R. A. 1918 F 609, *et seq.* *Cf.* RoBards *v.* Lamb, 127 U. S. 58 (1888) (Due process); Blessing *v.* McLinden, 81 N. J. L. 379 (1911).

Many cases are now disposed of by statutes permitting suits against unincorporated associations in the association name. The judgment is satisfied by association property. Taff Vale Ry. Co. *v.* Amal. Soc. Ry. Serv., *supra*.

[30] See West *v.* Randall, *supra*, 193–6.

[1] Contempts *in facie curiae* seem originally to have been punished by the usual process of indictment. Davie's Case, 2 Dyer, 188 (1561). This method was still in force as late as 1640. Harrison's Case, Cro. Car. 503 (1638). The earliest case found of a proceeding against a stranger for a libel on the court by the summary method was in 1720. Rex *v.* Middleton, Fort. 201 (1721); Rex *v.* Wiatt, 8 Mod. 123 (1723). The contrary opinion, that this power to punish summarily for contempt of court was co-eval with the constitution of the courts, must be discarded in the light of further historical knowledge. See The Queen *v.* Lefroy, L. R. 8 Q. B. 134, 137 (1873); The King *v.* Almon, 8 How. St. Tr. 51 (an undelivered opinion of Chief Justice Wilmot which has gained the strength of judicial utterance by its frequent citation). But see John Charles Fox, "The King *v.* Almon," 24 LAW. Q. REV. 184, 266.

[2] Respublica *v.* Oswald, 1 Dallas (Pa.), 318 (1788); Comm. *v.* Dandridge, 2 Va. Cas. 408 (1824). See United States *v.* Hudson, 7 Cranch (U. S.), 32, 34 (1812).

[3] Contempt of court has been defined as a power to punish summarily for any conduct that tends to bring the authority and administration of the law into disrepute or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation. See OSWALD, CONTEMPT OF COURT, 3 ed., 6. See, in general, Joseph H. Beale, "Contempt of Court, Criminal and Civil," 21 HARV. L. REV. 161.

[4] See Wilbur Larremore, "Constitutional Regulation of Contempt of Court," 13 HARV. L. REV. 615.

[5] See Carter *v.* Comm., 96 Va. 791, 816 (1899).

[6] See McLeod *v.* St. Aubyn, [1899] A. C. 549, 561

Court of Louisiana [7] held that a mayor, who without authority set at liberty a misdemeanant sentenced to a term of imprisonment, could not be punished for contempt. The court distinguishes between interfering with the enforcement of judgments in civil and criminal actions. In civil cases the exercise of the court's powers is not terminated with its decree, but it relies either upon itself or on an officer of the law to execute that decree. Resistance to its mandates is, therefore, properly a contempt.[8] In a criminal case, however, the sentence of the court terminates the exercise of its judicial powers.[9] Interference thereafter is not a contempt,[10] the prisoner being delivered to the executive until the term of his imprisonment is at an end. Nor is there any necessity requiring the intervention of this summary power, as another adequate remedy is provided.[11] This situation must be distinguished from instances where the interference is of a similar type, but the court's work is as yet incomplete, as the rescue of a person arrested upon mesne process,[12] the unauthorized discharge of a prisoner confined to enforce obedience to a rule of the court,[13] or the unlawful release of a prisoner during a time when proceedings against him are stayed pending an appeal to a superior tribunal.[14] These are direct interferences with the administration of justice and are all punishable as contempts.

A recent decision [15] refuses to embrace within the law of contempts a publication reflecting upon a party to a suit made after a judgment therein had been rendered. Publications, where the proceedings are pending, reflecting upon the character of parties,[16] witnesses,[17] or court,[18] have been uniformly so punished at common law [19] and under

[7] Hundley *v.* Foisy, 91 So. (La.) 164 (1922). For the facts of this case, see RECENT CASES, *infra*, p. 106.

[8] Lane *v.* Sterne, 3 Giff. 629 (1862) (interference with a receiver); Angel *v.* Smith, 9 Ves. 335 (1804) (interference with a sequestrator); Cooper *v.* Asprey, 3 B. & S. 932 (1863) (resistance to an interpleader process of a sheriff); Long Wellesley's Case, 2 Russ. & M. 639 (1831) (removing without leave a ward out of the jurisdiction of the court). See 4 BLACKSTONE, COMMENTARIES, 284–285; 2 HAWKINS, P. C., c. 22 § 34.

[9] *In re* Beck, 63 Kan. 57, 64 Pac. 971 (1901). See Comm. *v.* Foster, 122 Mass. 317 (1877).

[10] *Ex parte* Turner, 73 Fla. 360, 74 So. 314 (1917). *Cf.* Moravia's Case, C. T. Hardw. 135 (1735).

[11] At common law and frequently, as in the principal case, by statute such action is a misdemeanor. See 1920 LA. REV. STAT. § 866.

[12] Blackwell *v.* Tatlow, 2 My. & K. 321 (1833); Anonymous, Say. 121 (1754); The King *v.* Elkins, 4 Burr. 2129 (1767); Jennings *v.* Simpson, 2 Jur. 28 (1838); State *v.* Clerk of Bergen, 29 Mont. 230, 74 Pac. 412 (1903). See 1912 NEB. REV. STAT. § 5795.

[13] Matter of Leggatt, 162 N. Y. 437, 56 N. E. 1009 (1900).

[14] United States *v.* Shipp, 203 U. S. 563 (1906); State *v.* Sparks, 27 Tex. 627 (1864).

[15] Dunn *v.* Bevan, 127 L. T. R. 14 (1922). For the facts of this case, see RECENT CASES, *infra*, p. 106.

[16] Telegram Newspaper Co. *v.* Comm., 172 Mass. 294, 52 N. E. 445 (1899) (abusing plaintiff in a civil proceeding); Field *v.* Thornell, 106 Ia. 7, 75 N. W. 685 (1898) (abusing defendant in a criminal proceeding); Globe Newspaper Co. *v.* Comm., 188 Mass. 449, 74 N. E. 682 (1905); The King *v.* Parke, [1903] 2 K. B. 432, commented on in 17 HARV. L. REV. 280.

[17] State *v.* Howell, 80 Conn. 668, 69 Atl. 1057 (1908).

[18] Matter of Sturoc, 48 N. H. 428 (1869); Toledo Newspaper Co. *v.* United States, 247 U. S. 402 (1918). See 11 HARV. L. REV. 543.

statute.[20] The prevailing doctrine in England[21] and several American jurisdictions today,[22] is in accord with the common law that "scandalizing the court" before or after the termination of a suit is a contempt.[23] The weight of American authority, however, declines to treat such publications made after a suit is terminated in this manner.[24] It may be urged *contra* that the danger that in grave cases the right to a fair and impartial trial might be endangered justifies a limitation upon the freedom of the press.[25] Moreover, although the judge has a remedy in the criminal law, such a remedy forces him to resort to another court to vindicate the dignity and independence of his own tribunal. The origin and purpose of the power of contempt militates against such a distinction between pending and terminated proceedings.[26] These considerations, how-

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[19] *In re* Read & Huggenson, 2 Atk. 469 (1742); Respublica *v.* Oswald, 1 Dallas (Pa.), 318 (1788).

[20] Toledo Newspaper Co. *v.* United States, *supra*. See Patterson *v.* Colorado, 205 U. S. 454, 463 (1907). A modern tendency exhibit itself in the attempt to abolish the power of the court to punish contempts of this type. Respublica *v.* Passmore, 3 Yeates (Pa.) 441 (1804), following the doctrine of Respublica *v.* Oswald, *supra*, led to the attempted impeachment of Chief Justice Shippen and Justices Yeates and Smith. See LOYD, EARLY COURTS OF PENNSYLVANIA, 143–147. This culminated in an act of the Pennsylvania legislature abolishing such contempts. See 1 BRIGHTLY, PURDON'S DIGEST, 12 ed., 382. *Cf. Ex parte* Hickey, 4 Sm. & M. (Miss.) 751 (1844); *Ex parte* Poulson, Fed. Cas. 11350 (Pa. 1835). The same tendency manifested itself in the impeachment proceedings against Judge Peck in the United States Senate. See 7 GALES AND SEATON, REGISTER OF DEBATES IN CONGRESS, 26–46.

[21] The Queen *v.* Gray, [1900] 2 Q. B. 36. In McLeod *v.* St. Aubyn, *supra*, the Privy Council expressed the opinion that committals for contempt of court by scandalizing the court itself had become obsolete in England, though admitting that their enforcement was proper in the Colonies in order to preserve in such communities the dignity of, and respect for the court. This dictum and the doubt it expressed seem to have been dispelled by the later case. See Dunn *v.* Bevan, *supra*, at 15.

[22] State *v.* Morril, 16 Ark. 384 (1855); *In re* Chadwick, 109 Mich. 588, 67 N. W. 1071 (1896); Comm. *v.* Dandridge, 2 Va. Cas. 408 (1824); Burdett *v.* Comm., 103 Va. 838, 48 S. E. 878 (1904), commented on in 18 HARV. L. REV. 392. See State *ex rel.* Crow *v.* Shepherd, 177 Mo. 205, 76 S. W. 79 (1903).

[23] See *In re* Read & Huggenson, *supra*, at 471; The King *v.* Almon, *supra*. See 4 BLACKSTONE, COMMENTARIES, 285; 2 HAWKINS P. C., c. 22 § 36.

[24] Patterson *v.* Colorado, *supra;* People *ex rel.* Connor *v.* Stapleton, 18 Colo. 568 (1893); State *ex rel.* Metcalf *v.* District Court, 52 Mont. 46, 155 Pac. 278 (1915). But see State *ex rel.* Att'y Gen'l *v.* Circuit Court, 97 Wis. 1, 72 N. W. 193 (1897). This doctrine has been specifically embodied in the federal statutes. See 1916 U. S. COMP. STAT. § 1245.

[25] It may well be said that what a man fears may happen to him if he discharges his duty conscientiously, may influence him in the performance of his duty, since he must needs contemplate the result at the time he considers his duty. See *Ex parte* McLeod, 120 Fed. 130 (D. Ala., 1903), where an assault upon a commissioner for a decision in a terminated suit was punished as a contempt. A distinction between a physical attack upon the person of a judge and a libellous attack upon his reputation is assuredly unsound.

[26] The great objection to the exercise of such a summary power by a single judge, unfettered by a jury, is the danger of abuse. This danger is not merely a phantom conjured up by the abettors of the freedom of the press, but has manifested itself sufficiently in this country to warrant consideration. Toledo Newspaper Co. *v.* United States, *supra;* United States *v.* Craig, 266 Fed. 230,

ever, are not present where it is the party to an adjudicated suit who is injured. The wrong done is purely to his personal reputation and the dignity of the court is not at issue. A remedy is afforded in an action for defamation. The power to punish for contempt, born of necessity, and the exercise of which can be justified only by necessity,[27] should not be invoked in his support.

THE MISSOURI ILLEGITIMACY ACT. — At the common law,[1] a child born out of lawful wedlock[2] was *filius nullius*, and had no rights of inheritance or of support.[3] The harshness of this rule has long since been modified by legislation in every English-speaking jurisdiction.[4] In most states, the child is now recognized as the child of its mother[5]; they are given reciprocal rights of inheritance[6];

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279 Fed. 900 (S. D. N. Y., 1921); Fleming *v.* United States, 279 Fed. 613, (9th. Circ., 1922); People *v.* Lawrence, 23 Nat. C. & Rep. 534 (Cir. Ct. Ill., 1901). *Cf. Ex parte* Craig, 274 Fed. 177 (2nd Circ., 1921); *Ex parte* Robinson, 19 Wall. (U. S.) 505 (1873). See 34 N. J. L. J. 119. An analysis of these cases would justify the conclusion that some limitation should be placed upon the individual judge in regard to his power to punish for contempt, other than a review of the reasonableness of his action by the appellate court. The experience of the Pennsylvania and Mississippi judiciaries deprived of this power (see note 20, *supra*) would seem to indicate that society has advanced to a point where the necessity for the exercise of this summary power has disappeared. On the other hand, the experience of the English courts indicates that this power can be had without an accompanying abuse. Its continued existence would then seem to depend upon its wise and judicious exercise by the courts in cases where the necessity for such summary action is apparent beyond any reasonable doubt.

[27] See State *v.* Frew, 24 W. Va. 416, 477 (1884).

[1] On the history and philosophy of the common law rules on this subject, see Joseph Cullen Ayer, Jr., "Legitimacy and Marriage," 16 HARV. L. REV. 22. See also C. A. Herreshoff Bartlett, "Illegitimates and Legitimation," 54 AMER. L. REV. 563.

[2] The term "child born out of lawful wedlock" is used in preference to "bastard," to which usage has attached an unpleasant stigma, and "illegitimate," which is not strictly accurate. See DWIGHT, LAW OF PERSONS & PERSONAL PROPERTY, 256. The term excludes, of course, a child born to a widow within ten months after her husband's death. For a judicial definition of "legitimate child," see Gates *v.* Seibert, 157 Mo. 254, 272 (1900).

[3] See TIFFANY, DOMESTIC RELATIONS, 3 ed., 307. See also 16 COL. L. REV. 678. As to the status of the child born out of lawful wedlock, see TIFFANY, *op. cit.*, 304; DWIGHT, *op. cit.*, 263. See also Eaton *v.* Eaton, 88 Conn. 269, 277 (1914). While the child was said to be *filius nullius*, yet in some cases his relationship to his parents was recognized, as in the case of marriage within the forbidden degrees of consanguinity. The Queen *v.* Brighton, 1 B. & S. 447 (1861). As to whether the word "child" in a statute allowing recovery in case of death by wrongful act applies to a child born out of wedlock, see 19 MICH. L. REV. 562. See also 35 HARV. L. REV. 888.

[4] A very valuable compilation of the illegitimacy laws of the United States and certain foreign countries, with comments thereon by Prof. Ernst Freund, is found in FREUND, ILLEGITIMACY LAWS OF THE UNITED STATES, Bureau Pub. No. 42, U. S. Child. Bureau. See also 16 COL. L. REV. 698. For the history of such legislation, see FREUND, *op. cit.*, 9. See note 10, *infra*.

[5] See FREUND, *op. cit.*, 17. In one state, Connecticut, this recognition was accorded at the common law. Heath *v.* White, 5 Conn. 228 (1824). See Eaton *v.* Eaton, 88 Conn. 269, 278 (1914).

[6] See TIFFANY, *op. cit.*, 308; DWIGHT, *op. cit.*, 265; FREUND, *op. cit.*, 19. For the Missouri law, see Eldon R. James, "Some Aspects of the Status of